

Service Date: December 9, 2003

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application of)
NORTHWESTERN ENERGY to) UTILITY DIVISION
Extend the Availability of its QF-1 Tariff)
Schedule through June 30, 2007 and Change) DOCKET NO. D2002.6.63
the Tariff Price and Terms.) ORDER NO. 6459a

FINAL ORDER

FINDINGS OF FACT

Background

1. In August, 1998, Montana Power Company (MPC) petitioned the PSC to suspend its Long Term Qualifying Facility power purchase rate schedule, LTQF-1. The LTQF-1 tariff was available to qualifying facilities (QFs) with installed capacity less than or equal to 3 MW for power purchase agreements from five to fifteen years long. In light of the Federal Energy Regulatory Commission's Orders 888 and 889 establishing wholesale open access, along with Montana's Senate Bill 390 establishing retail direct access and MPC's decision to sell its generation assets, MPC argued, and the Commission agreed, that it was "appropriate to begin weaning independent power producers off of guaranteed utility buyers."

2. MPC proposed replacing the LTQF-1 rate schedule with a new rate schedule for QFs 3 MW and less. The new QF-1 rate schedule would reflect the 4-year transition period established in Senate Bill 390 by precluding new QF contracts from extending beyond July 2002. The price in the QF-1 rate schedule would be the lower of \$22.25 per MWh (equal to the price MPC agreed to pay PPL to buy back power during the transition period) or an indexed wholesale market price.

3. The Commission approved MPC's request to suspend the LTQF-1 rate schedule and approved the proposed QF-1 rate schedule as a replacement. However, the Commission

recognized that the federal PURPA¹ statute was still in effect, despite recent efforts to repeal it. The Commission required MPC to file by January 2002 to extend the availability of the QF-1 rate schedule if PURPA was still law. The Commission further determined that QFs rely on generation sources and technologies that Montana law (SB 390) specifically considers worthy of continued public support, i.e., renewable technologies which, often, are small and distributed compared to traditional utility generation. So although the historic relationship between QFs and utilities may be coming to an end, the Commission stated that there will continue to be a connection between distribution system reliability and expansion and QF-type entities.²

4. In June, 2002, NorthWestern Energy petitioned the Commission to extend the availability of the QF-1 rate schedule through June 2007. The filing reflected the continued existence of the federal PURPA statute and the extension of Montana's retail restructuring transition period.

5. On June 25, 2002, the Commission approved NWE's proposed QF-1 tariff schedule on an interim basis and provided an opportunity for interested persons to submit comments and/or request a public hearing. The Commission granted petitions to intervene from Montana Consumer Counsel, Commercial Energy of Montana, Wind Montana, LLC, Northern Alternative Energy, Inc. and Tongue River Lumber Company. The Commission received requests for public hearing from Commercial Energy of Montana, Northern Alternative Energy, Inc. and Tongue River Lumber Company. Subsequently, none of the intervenors participated in this proceeding through either comments, discovery or testimony and none put on a case at the public hearing held August 21, 2003. NWE's filing is summarized below.

6. NWE asserted that its role as default supplier is not consistent with long term avoided cost-based acquisition of QF resources. NWE does not own or rate base resources. Rather, it manages a portfolio of wholesale contracts. From time to time, as NWE acquires additional resources, all resource developers, including QFs, have opportunities to bid for sales contracts. This market acquisition process provides a vehicle for QFs to receive fair consideration, according

1 Public Utility Regulatory Policies Act of 1978.

2 See Docket No. D98.8.183, Order No. 6124.

to NWE. NWE believes a better developed regional wholesale market with open access to transmission also allows QFs to move power to markets beyond NWE's local service territory.

7. NWE stated that because its retail customers have the ability to leave and return to default supply service, requiring it to offer contracts to all QFs that demand one diminishes the Company's ability to balance demand and supply. NWE suggested that an influx of QFs could result in power supply surpluses and stranded costs.

8. NWE maintained that the logic behind the original QF-1 rate schedule is still valid. Smaller QFs (i.e., those 3 MW and less) still do not have the ability to engage in wholesale markets as easily as large QFs. But because of uncertainty during the transition period regarding retail loads and the number of potential new QF projects, as well as the existence of other default supply contracts, NWE asserted that there should be a limit on the total amount of power NWE would be required to purchase under the QF-1 rate schedule. NWE suggested the limit should be ten percent of its default supply load as of July 1, 2002. According to NWE this limit would balance opportunities for small QFs with protection for default supply customers.

9. Finally, NWE proposed to increase the rate in the QF-1 schedule from \$22.25 per MWh to \$32.75 per MWh. The proposed rate is based on the in-market QF costs established in the Settlement Agreement approved by the Commission in the "Tier 2" Final Order. See Docket No. D97.7.90, Order No. 5986w. NWE stated that this rate represents the market value of QF power currently included in the default supply portfolio.

Commission Decision

10. The Commission has established an additional issues procedure in Docket No. D2003.7.86 to explore a number of policy issues related to various qualifying facility rate schedules, including the QF-1 schedule. In particular, Issues 3, 4 and 5 identified in the Commission's September 18, 2003 Notice of Additional Issues, in Docket D2003.7.86, relate to aspects of NWE's proposed QF-1 rate schedule. Issue 3 relates to the 3 MW threshold for receiving long-term contracts, the meaning of long-term (e.g., 4 to 35 years) and the cost basis for long-term contracts. Issue 4 relates to whether standard rates should be established for various

small power production and cogeneration technologies. Issue 5 relates to whether it is legal and advisable to limit the amount of QF power NWE would be obliged to acquire under long-term or short-term tariffs.

11. In light of the Commission's consideration of policy issues regarding long-term sales and purchases of QF power in D2003.7.86, and given the lack of any intervenor participation in this proceeding, the Commission grants final approval to NWE's proposed QF-1 rate schedule in this proceeding and closes Docket D2002.6.63. However, in doing so, the Commission is not making any decisions on QF policy issues that were raised in this Docket. Depending on how the Commission resolves policy issues in Docket D2003.7.86, future changes to the QF-1 rate schedule may occur.

CONCLUSIONS OF LAW

1. The Montana Public Service Commission properly exercised jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 3, MCA.

2. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter.

ORDER

NOW THEREFORE IT IS ORDERED that NWE's Application to extend the availability of its QF-1 tariff schedule through June 30, 2007 and change the tariff price and terms is approved. The Commission's approval does not constitute a decision on proper going-forward long-term qualifying facility policies, which are the subject of Docket No. D2003.7.86. Commission staff is authorized to process compliance tariffs.

DONE AND DATED this 2nd day of December, 2003, by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ROWE, Chairman

THOMAS J. SCHNEIDER, Vice Chairman

MATT BRAINARD, Commissioner

GREG JERGSON, Commissioner

JAY STOVALL, Commissioner

ATTEST:

Connie Jones
Commission Secretary

(SEAL)

NOTE: There is no reconsideration of the granting of a protective order. There is a procedure to challenge the provider's claim of confidentiality. See ARM 38.2.5008.